UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 16 Cr. 91 (PKC)

SCOTT TUCKER and
TIMOTHY MUIR, Trial

Defendants.

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New York, N.Y.
October 13, 2017
9:35 a.m.

Before:

HON. P. KEVIN CASTEL

District Judge
and a jury

APPEARANCES

JOON H. KIM
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Southern District of New York
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-and-
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BY: THOMAS J. BATH
-and-
BEVERLY VAN NESS

(Trial resumed)

THE COURT: Please remain standing for our jurors.

(Jury present)

THE COURT: Please be seated.

Good morning, ladies and gentlemen. I hope you had a pleasant evening, and congratulations to the New York Yankees on last night's win.

I'm going to pick up where I left off, and I'm going to begin with Count One, which is the charge of conspiracy to collect unlawful debts. You're going to see that I'm going to spend some time on this count because some of the terms that will apply to some of the other counts will apply here and now, and those definitions will apply to the later counts and I won't have to repeat them for you. That's why this first count will take a little bit longer than the other counts.

Count One charges that defendants Tucker and Muir agreed together and with others to conduct or participate in the conduct of the affairs of an enterprise through the collection of an unlawful debt. The indictment calls this enterprise the Tucker Payday Lending Organization. To find a defendant guilty of Count One, the government must prove beyond a reasonable doubt the following elements.

Now, I'm going to go through each of these, so I'm just going to give them to you first and then we'll talk about each one.

First, that the charged conspiracy existed during the period alleged in the indictment;

Second, that the defendant intentionally joined and participated in this conspiracy at some point during its existence.

Now, these first two elements will be applied to all three charged conspiracies, except where I tell you otherwise. The next four elements describe the alleged illegal objects of the conspiracy charged in Count One.

The third element is that the enterprise alleged in the indictment, referred to as the Tucker Payday Lending Organization, existed;

Fourth, that the Tucker Payday Lending Organization affected interstate commerce;

Fifth, that the defendant was employed by or associated with the Tucker Payday Lending Organization; and

Sixth, that the defendant willfully and knowingly conspired with at least one other person to participate in the conduct of the affairs of that enterprise through the collection of an unlawful debt.

Count One, the first element.

The first element requires the government to prove beyond a reasonable doubt the existence of a conspiracy. A conspiracy is an agreement, or an understanding, by two or more persons to accomplish one or more unlawful objectives by

working together. In this case, the government alleges that the unlawful purpose of the conspiracy was to operate an enterprise engaged in the collection of an unlawful debt.

To prove that a conspiracy exists, the government must prove that two or more people explicitly or implicitly came to an understanding to achieve the unlawful object charged in the count. It is not necessary for you to find that the agreement was ever expressed orally or in writing, but the government does have to prove that there was a mutual understanding between at least two people.

The indictment charges that the conspiracy lasted from in or about 1997 until at least in or about August 2013. It is not necessary for the government to prove that the conspiracy lasted throughout the entire period alleged, but only that it existed for some period within that time frame.

The second element that the government has to prove beyond a reasonable doubt is that each defendant intentionally joined the conspiracy, either at the outset or at some later point. To prove this element, the government must prove beyond a reasonable doubt that the defendant knowingly and willfully joined the conspiracy for the purpose of furthering its unlawful object, which is the collection of an unlawful debt.

Knowingly means to act consciously and voluntarily, rather than by mistake or accident. Willfully means to act deliberately and with a purpose to do something that the law

forbids. The defendant need not have known that he was breaking any particular law, but he must have been aware of the generally unlawful nature of his act. The question of whether a person acted willfully and knowingly is a question of fact for you to determine, like any other fact question. This question involves the defendant's state of mind.

It is not necessary that a defendant be fully informed of all the details of the conspiracy, or of all of its participants. He need only know one other member of the conspiracy. He can join the conspiracy at any point and need not have received any benefit in return. On the other hand, mere association between the defendant and a conspirator does not make the defendant a member of the conspiracy, even if he knows that the conspiracy exists. In other words, knowledge and association are not enough; the defendant must have intentionally participated in the conspiracy with the purpose of helping to achieve its unlawful purpose.

Once you find that a conspiracy existed and that the defendant was a member, you may take into account against that defendant any acts or statements made by any of his coconspirators, even if such acts or statements were not made in the presence of the defendant or were made without his knowledge.

Once a conspiracy is formed, it is presumed to continue until either its objective is accomplished, or until

there is some affirmative act of termination by the members. Similarly, once a person is found to be a member of a conspiracy, he is presumed to continue as a member of that conspiracy until the conspiracy is terminated, unless it is shown by some affirmative proof that the person withdrew and disassociated himself from it.

The instructions that I have given you on the definition of conspiracy, the existence of a conspiracy and membership in a conspiracy apply to Count One as well as to the two other conspiracies that I will talk to you about: the conspiracy to commit wire fraud and the conspiracy to commit money laundering.

Now, the objects of each of the conspiracies are different, and that's what I'm going to talk about next.

The next four elements relate to the object of the conspiracy in Count One.

The third element is that the government must prove beyond a reasonable doubt the existence of an enterprise that the indictment calls the Tucker Payday Lending Organization. The alleged purpose of this enterprise was to enrich its leaders, members and associates through the collection of unlawful debt. The indictment further charges that the enterprise was in the business of lending money at rates that were unlawful under state usury laws, and that the rates of interest charged were at least twice the maximum enforceable

rates of interest.

I'll talk more about usury and maximum enforceable rates of interest and rates of interest a little later in the charge.

An enterprise does not have to have a particular name, or for that matter, have any name at all. Nor must it be registered or licensed as an enterprise. It does not have to be a commonly recognized legal entity, such as a corporation or a partnership. It may be a group of people informally associated together for a common purpose of engaging in a course of conduct. In addition to having a common purpose, this group of people must have a core of personnel who function as a continuing unit.

The enterprise must continue to exist in substantially similar form throughout the period charged. This does not mean that the membership must remain exactly identical, but the enterprise must have a recognizable core that continues during a substantial time period within the time frame charged in the indictment.

The fourth element the government must prove beyond a reasonable doubt is that the Tucker Payday Lending Organization was engaged in or had an effect upon interstate commerce. Interstate commerce includes the movement of goods, services, money and individuals between states.

The effect upon interstate commerce need not be

substantial. Nor is it necessary that the effect on interstate commerce have been an adverse or negative effect.

It is not necessary to prove that the acts of the defendant you are considering affected interstate commerce as long as the acts of the Tucker Payday Lending Organization itself had such an effect, if you have had that there was such an enterprise.

Finally, the government is not required to prove that the defendant knew he was affecting interstate commerce. All that is necessary is that you find beyond a reasonable doubt that the Tucker Payday Lending Organization engaged in or affected interstate commerce in some minimal way.

The fifth element the government must prove beyond a reasonable doubt with respect to Count One is that the defendant you are considering was associated with or was employed by the Tucker Payday Lending Organization.

It is not required that the defendant you are considering have been associated with or employed by the enterprise for the entire time that the Tucker Payday Lending Organization existed. But the government is required to prove beyond a reasonable doubt that at some time during the period charged in the indictment, the defendant you are considering was associated with or employed by the Tucker Payday Lending Organization.

The government must also show that the defendant's

association with the Tucker Payday Lending Organization was knowing -- that is, made with knowledge of the existence of the Tucker Payday Lending Organization through a general awareness of some of its purposes, activities and personnel. A person cannot be associated with or employed by an enterprise if he does not know of the enterprise's existence or the nature of its activities.

The sixth and final element the government must prove beyond a reasonable doubt with respect to Count One is that the defendant willfully and knowingly agreed to participate, directly or indirectly, in the affairs of the Tucker payday organization through collection of an unlawful debt.

"Usury" is the name the law gives to lending money at an illegally high rate of interest. For the purpose of this case, an "unlawful debt" means a debt that is unenforceable under state law because of the laws relating to usury, and which was incurred in connection with the business of lending money at a rate usurious under state law, where the usurious rate is at least twice the enforceable rate under state law.

Usury laws can differ from one state to another, as can enforceable rates of interest. In New York, the highest enforceable rate of interest on consumer loans is 25 percent per year, and loans above that rate are usurious and unenforceable. So as to New York, the collection of a consumer debt by a business engaged in lending money that carries an

annual interest rate of 50 percent or more is the collection of an unlawful debt. As you can see in that example, a rate of 50 percent is twice the highest enforceable rate of 25 percent.

Some states, including Connecticut, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, Pennsylvania, North Carolina, Ohio, Vermont and Washington, D.C., have rates of interest different or even higher than New York, but none of these states allow the enforcement of a consumer loan with a rate of interest greater than 36 percent. So in these states, the collection of a consumer loan by a business engaged in money lending that carries an annual interest rate of 72 percent -- that's two times 36 -- would be an unlawful debt.

The government is not required to prove that the defendant knew what the usury rates were in the states that the borrowers lived. For example, in the case of a New York borrower, the government does not need to prove that the defendant you are considering knew that New York's highest enforceable rate of interest on consumer loans was 25 percent. Nor does the government have to prove that a defendant knew the enforceable rate of interest in any other state. In this case, ignorance of the specific terms of any law is no excuse to the charged conduct. The government can meet its burden on the "willfully" and "knowingly" element by proving that a defendant acted deliberately, with knowledge of the actual interest rate

charged on the loan. It may also meet its burden by showing a defendant acted deliberately, with an awareness of the generally unlawful nature of the loan, and also that it was the practice of the business engaged in lending money to make such loans.

The focus of the sixth element is on the defendant's agreement to participate in the objective of the Tucker Payday Lending Organization to collect an unlawful debt. To prove the defendant's agreement, the government need not prove that the defendant you are considering actually engaged in the collection of unlawful debt or even agreed to engage in the collection of an unlawful debt, as long as the government proves that he participated in some manner in the overall objective of the conspiracy.

For the purpose of Count One, the government does not have to prove that the defendant himself committed any particular act concerning the collection of debt. The government only has to prove that the defendant entered into the charged conspiracy and participated in the conspiracy knowing that he, or any of his coconspirators, would engage in the collection of unlawful debt.

That completes Count One, ladies and gentlemen. Let's stand up and stretch and take a deep breath. OK.

Counts Two through Four of the indictment charge the defendants with substantive violations of law. It is a federal

crime for any person who is employed by or associated with an enterprise that is engaged in or affects interstate commerce to conduct or to participate in the conduct of the affairs of that enterprise through the collection of an unlawful debt.

In order to find the defendant guilty of a substantive violation, you must find that the government proved each of the following five elements beyond a reasonable doubt:

First, that the enterprise alleged in the indictment, referred to as the Tucker Payday Lending Organization, existed;

Second, that the Tucker Payday Lending Organization affected interstate commerce;

Third, that the defendant was associated with or employed by the Tucker Payday Lending Organization;

Fourth, that the defendant willfully and knowingly engaged in the collection of unlawful debt; and

Fifth, that the defendant conducted or participated in the conduct or the affairs of the Tucker Payday Lending Organization through the collection of unlawful debt.

As you have seen, the first, second and third elements of the substantive offenses are identical to the third, fourth and fifth elements of the conspiracy offense charged in Count One. With regard to these elements, you should follow the instructions that I've given you with regard to Count One.

The principal difference between Count One and Counts Two through Four relate to the fourth and fifth elements

included in Counts Two through Four. As I have instructed you in the conspiracy count, the defendant you are considering need only have conspired or agreed to participate in the conduct of the affairs of the Tucker Payday Lending Organization, knowing that he, or any of his coconspirators, agreed to the collection of unlawful debt. But under Counts Two through Four, which are the substantive counts, you cannot convict the defendant you are considering unless you find that he actually conducted or participated in the conduct of the Tucker Payday Lending Organization, directly or indirectly, through the collection of unlawful debt.

The fourth element, then, on Counts Two through Four that the government must prove beyond a reasonable doubt is that the defendant willfully and knowingly engaged in the collection of unlawful debt. Willfully, knowingly and unlawfully have the same meaning on which I have instructed you previously.

For each of Counts Two, Three and Four, the indictment alleges five specific unlawful debts that the defendant engaged in collecting. The government does not need to prove the existence of two or more collections of unlawful debt forming a pattern. Rather, each individual instance of collection of an unlawful debt constitutes a separate substantive violation. You must, however, unanimously agree that the government has proven beyond a reasonable doubt that the defendant engaged in

collecting at least one particular debt named in a count before you may convict the defendant on that count.

The fifth element on Counts Two through Four is that the defendant conducted or participated in the conduct of the affairs of the Tucker Payday Lending Organization, directly or indirectly, through the collection of unlawful debt.

It is not enough that there be an enterprise and that the defendant engaged in the collection of unlawful debt. More is required. There must be a meaningful connection between the defendant engaging in the collection of unlawful debt and the affairs of the enterprise. The defendant must have conducted or participated in the enterprise by collecting or aiding in the collection of unlawful debt. It is not necessary, however, that the collection of unlawful debt directly furthers the enterprise's activities. It is enough that the defendant's collection of unlawful debt was related to the enterprise's activities.

The fifth element also requires that the defendant have some role in the operation, direction or management of the enterprise. To conduct or participate in the conduct of the enterprise means that the defendant must have played some part of the operation or management of the enterprise. The government is not required to prove that a defendant was a member of upper management, and an enterprise is operated not only by those in upper management, but also by those lower down

in the enterprise who act under the direction of upper management. It is sufficient if you find that defendant provided substantial assistance to those who conducted the enterprise and thereby was involved in playing a part in the direction of the affairs of the enterprise through collection of unlawful debt.

Now, the defendant you are considering may be convicted on Counts Two through Four if he aided and abetted -- aided and abetted -- others in committing these crimes.

The aiding and abetting statute provides that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

It is not necessary for the government to show that the defendant you are considering himself physically committed the crime with which he is charged in order for you to find the defendant guilty. If the government proves beyond a reasonable doubt that the defendant you are considering was an aider or abettor of the crime charged, you should find the defendant guilty of that crime.

A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself. No one can be convicted of aiding and abetting the criminal acts of another if no crime was committed by the other person in the first place.

In order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate himself in some way with the crime, and that he willfully and knowingly participate in the crime by doing some act to help make the crime succeed.

The definitions of "willfully" and "knowingly" that I have previously given apply here.

To establish that a defendant participated in the commission of a crime, the government must prove that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who are committing a crime, is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of the crime is not an aider or abettor. An aider or abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

I will now move to the second way that a defendant may be found guilty of aiding and abetting the crimes charged in Counts Two through Four, and that is by willfully causing the commission of a crime.

What does the term "willfully causing" mean? It does not mean that the defendant in question needs to have physically committed the crime or supervised or participated in the actual commission of the crime charged in the indictment. The meaning of the term "willfully cause" can be found in the answers to the following questions:

First, did the defendant you are considering take some action without which the crime would not have succeeded?

Second, did the defendant you are considering intend that the crime would actually be committed by others?

If the government proves that the answers to both of these questions are yes, then the particular defendant is guilty of the crime charged just as if he had directly committed the crime. To find that defendant guilty under the provisions of the statute, the government need not prove that he acted through a guilty intermediary; that is, a defendant could be found guilty even if he acted through someone who is entirely innocent of the crime charged in the indictment.

You have heard evidence that defendant Scott Tucker received legal advice from lawyers, and you may consider that evidence in deciding whether Mr. Tucker acted willfully and with knowledge. However, the mere consultation with a lawyer is not itself a defense to criminal conduct.

In considering whether Mr. Tucker acted willfully and with knowledge as to Counts One through Four, you must consider

whether Mr. Tucker honestly and in good faith sought the advice of a competent lawyer as to what he may lawfully do. This means that he sought and obtained legal advice regarding a proposed course of conduct before proceeding with that course of conduct. You must also consider whether Mr. Tucker fully and honestly presented all relevant facts to the lawyer, and whether he honestly followed such advice in good faith, relying on it and believing it to be correct. In short, you should consider whether, in seeking and obtaining advice from lawyers, Mr. Tucker intended for his acts to be lawful. If he did so, a defendant cannot be convicted of a crime that requires willful and unlawful intent, even if such advice were an inaccurate description of the law.

On the other hand, no defendant can willfully and knowingly violate the law and excuse himself from the consequences of his conduct by asserting that he followed the advice of a lawyer. Whether Mr. Tucker acted in good faith for the purpose of seeking guidance as to the specific acts in this case before engaging in those acts, whether he made a full and complete presentation of the facts to his lawyer, and whether he acted substantially in accordance with the advice received, are questions for you to determine.

You have heard reference during the trial to the term "tribal sovereign immunity." Tribal sovereignty means that federally recognized Indian tribes, like states, possess

certain powers of self-government. Tribal sovereign immunity is a principle of federal law that protects federally recognized Indian tribes from being sued by states or others. It does not preclude suits by the federal government against a tribe. It limits the means by which a state can enforce some of its laws against a federally recognized tribe. Tribal sovereign immunity does not provide a tribe or its members with any rights to violate the law of any state, but it does limit a state's ability to enforce its laws against a tribe. The tribes mentioned in this case are immune from suit by any state, including under a criminal usury statute. Immunity, however, does not make the conduct of the tribe lawful.

That completes the instructions on Counts Two through Four. Let's stand up and stretch again, with the deep breath.

Count Five charges both defendants with conspiracy to commit wire fraud. To prove Count Five, the government must prove beyond a reasonable doubt two elements:

First, that the charged conspiracy to commit wire fraud existed during the period alleged in the indictment; and

Second, that the defendant intentionally joined and participated in this conspiracy at some point during its existence with knowledge of its unlawful objective.

The indictment alleges that the object of the conspiracy in Count Five was to commit wire fraud, and the wire fraud itself, the substantive count, is Count Six.

I have instructed you previously on two elements of conspiracy, and you should follow those instructions. You must find that the conspiracy existed and that the defendant knowingly joined the conspiracy during the period of the conspiracy with knowledge of its unlawful object.

The period of the conspiracy is alleged to be from at least in or about 2004 up to and including in or about August 2013.

Count Six of the indictment charges both defendants with violating the wire fraud statute. In order to prove a defendant guilty of wire fraud, the government must establish beyond a reasonable doubt each of the following three elements:

First, that on or about the times alleged in the indictment -- that is, from in or about 2004 through in or about August 2013 -- there was a scheme or artifice to defraud others of money or property by false or fraudulent pretenses, representations or promises;

Second, that the defendant you are considering willfully and knowingly devised or participated in the scheme or artifice to defraud with knowledge of its nature and with specific intent to defraud;

Third, in the execution of that scheme, the defendant you are considering used, or caused the use by others, of interstate wires as specified in the indictment.

The first element the government must prove beyond a

reasonable doubt is the existence of a scheme or artifice to defraud others of money or property by means of false or fraudulent pretenses, representations or promises.

A "scheme or artifice" is simply a plan, device or course of conduct to accomplish an objective. "Fraud" is a general term. It is a term that includes all the possible means by which a person seeks to gain some unfair advantage over another person by false representations, false suggestion, false pretenses or concealment of the truth. The unfair advantage sought can involve money, property or other things of value.

Thus, a "scheme to defraud" is merely a plan to deprive another of money or property by trick, deceit, deception or swindle. In this case, the scheme to defraud is alleged to have been carried out by making false or fraudulent statements, representations, claims and documents. A statement, representation, claim or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was falsely made with the intention to deceive. Deceitful statements, half-truths or the concealment of material facts, when there is a duty to disclose them, may also constitute false or fraudulent statements. So, too, may the expression of an opinion not honestly held constitute a false or fraudulent statement.

You may find that a scheme to defraud existed only if the government has proven beyond a reasonable doubt the existence of the scheme alleged in the indictment. A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

The false representations and pretenses involved in the scheme to defraud must be "material." A material fact is one which reasonably would be expected to be of concern to a reasonable and prudent person relying on the statement in making a decision. That means if you find a particular statement or omission to have been untruthful or misleading, before you can find that statement or omission to be material, you must also find that the statement or omission was one that would have mattered to a reasonable person in making such a decision.

In particular, you must find that the statement or omission was one that would have mattered to a reasonable person in some monetary way. Actual reliance by a person on the representations is not required. It is sufficient if the misrepresentation is one that is capable of influencing the person's decision and is intended by the defendant to do so.

If you find that the government has sustained its burden of proof that a scheme to defraud others of money or property did exist, as charged, you next should consider the second element.

The second element of wire fraud that the government must establish beyond a reasonable doubt is that the defendant you are considering devised or participated in the fraudulent scheme willfully, knowingly and with the specific intent to defraud.

The words "devised" and "participated" are words that you are familiar with, and therefore, I do not need to spend much time defining them.

To devise scheme to defraud is to concoct or plan it. To participate in a scheme to defraud means to associate oneself with it with a view and intent toward making it succeed. While a mere onlooker is not a participant in a scheme to defraud, it is not necessary that a participant be someone who personally and visibly executes the scheme to defraud.

In order to satisfy this element, I remind you that it is not necessary for the government to establish that the defendant you are considering originated the scheme to defraud. It is sufficient if you find that a scheme to defraud existed, even if originated by another, and that the defendant, while aware of the scheme's existence, knowingly participated in it.

It is also not required that the defendant participate in or have knowledge of all of the operations of the scheme. The guilt of a defendant does not depend on how extensively he participated in the scheme, so long as he participated in the

scheme with knowledge of its general scope and purpose.

It is not necessary that a defendant have participated in the alleged scheme from the beginning. A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and intentionally acts in a way to further the unlawful goals, becomes a member of the scheme and is legally responsible for all that may have been done in the past in furtherance of the criminal objective and all that is done thereafter.

As I previously noted, before a defendant may be convicted of the wire fraud charge, he must also be shown to have acted willfully and knowingly and with a specific intent to defraud. I have previously explained the meaning of willfully and knowingly, and you should apply those instructions here. For this count, however, the government must prove beyond a reasonable doubt that the defendant acted not only willfully and knowingly, but also with the specific intent to defraud others of money or property. To act with intent to defraud means to act willfully, and with the specific intent to deceive, for the purpose of causing some financial loss to another.

Direct proof of willfulness, knowledge and fraudulent intent is almost never available. Indeed, it would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with

fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based upon a person's outward manifestations, words, conduct, acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. In deciding whether the government has proven whether the defendant you are considering had an intent to defraud, you need not limit yourself to just what the particular defendant said, but you may also look at what the defendant did and what others did in relation to the defendant and the entirety of the surrounding circumstances.

The third and final element that the government must prove beyond a reasonable doubt as to the wire fraud is that the interstate wire facilities were used in furtherance of the scheme to defraud. The term "wire facilities" includes telephones, faxes, emails, radio and television. Here, the government contends that interstate wire facilities were used.

The "interstate" requirement means that the wire communication must pass between two or more states, as, for example, a transmission of computer signals from New York and another state, such as Kansas, Oklahoma or Nebraska.

It is not necessary for the defendant you are considering to be directly or personally involved in any wire communication, as long as the communication is reasonably

foreseeable in the execution of the alleged scheme to defraud in which the particular defendant is accused of participating.

In this regard, it would be sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others, and this does not mean that the defendant himself must have specifically authorized others to execute a wire communication. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then he or she causes the wires to be used.

This wire communication requirement is satisfied even if the wire communication was done by a person with no knowledge of the fraudulent scheme, including the victim of the alleged fraud. The use of the wires need not itself be fraudulent. Stated another way, the wire communication need not contain any fraudulent representation or even any request for money. It is sufficient if the wires were used to further or assist in carrying out the scheme to defraud.

The government must establish beyond a reasonable doubt the particular use charged in the indictment. However, the government does not have to prove that the wire was used on the exact date charged in the indictment. It is sufficient if the evidence establishes beyond a reasonable doubt that the wire was used on a date reasonably near the date alleged in the

indictment.

Let me add the following. Only the wire communication must be reasonably foreseeable, not its interstate component. Thus, if you find that the wire communication was reasonably foreseeable and the interstate wire communications actually took place, then this element is satisfied even if it was not foreseeable that the wire communication would cross state lines.

Now, with respect to Count Six, the indictment also charges the defendants with aiding and abetting wire fraud. The definition of aiding and abetting that I previously gave applies here.

(Continued on next page)

THE COURT: Since an essential element of wire fraud is an intent to defraud, it follows that good faith on the part of a defendant is a defense to that charge. A defendant has no burden of establishing a defense of good faith. The burden is on the government to prove fraudulent intent beyond a reasonable doubt, and proving fraudulent intent proves a lack of good faith.

Even false representations or statements, or omissions of material facts, do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a particular defendant, and an honest belief that all material facts have been disclosed, is a complete defense, however inaccurate the statements may turn out to be.

In considering whether or not a particular defendant acted in good faith, you are instructed that a belief by the defendant you are considering, if such belief existed, that ultimately everything would work out so that no one would lose any money does not mean that the defendant acted in good faith.

No amount of honest belief on the part of the defendant you are considering that the scheme would ultimately aid others will excuse that defendant, if the defendant had the specific intent to harm the individuals by depriving them of

accurate information that was material to their decisions about how to use their assets, even if the defendant sought only to deprive the individuals of accurate information for a limited period of time.

Acting with intent to defraud requires acting with a purpose to cause actual financial harm to another. Actual financial harm includes denying a person or entity access to money. If a defendant deliberately supplies materially false information in order to obtain money, but believes that no harm will ultimately occur to the person from which he obtained the money -- i.e., that the victim will be better off having entered a lending relationship with the defendant or his associates -- that belief that no harm will result, or even the fact that no harm does result, is no defense. Thus, if you find that the defendant you are considering intended to inflict harm by obtaining money fraudulently, you may find that the defendant acted with intent to defraud.

It is also unimportant whether a victim might have discovered the fraud had he or she probed further. If you find that a scheme or artifice to defraud existed, it is irrelevant whether you believe that a victim was careless, gullible, or even negligent.

Ladies and gentlemen, let's stand up and stretch, with a deep breath.

You are truly good-natured people that you can even

muster a slight smile after listening to me at great length.

All right. Count Seven charges a conspiracy to commit money laundering. To prove Count Seven, the government must prove beyond a reasonable doubt:

First, that the charged conspiracy existed during the period alleged in the indictment;

Second, that the defendant intentionally joined and participated in the conspiracy at some point during its existence and with knowledge of its unlawful object.

I have previously instructed you on two elements under the law of conspiracy, and you should follow those instructions here. The period of the conspiracy to commit money laundering is alleged to be from at least in or about 2004 up to and including in or about August 2013. The indictment alleges that the money laundering conspiracy charged in Count Seven had two objects:

The first object of the conspiracy charged in Count Seven was to participate in a financial transaction that involves the proceeds of specified unlawful activity with the intent to promote the carrying on of that activity. The indictment charges a violation of that federal statute as a substantive crime in Count Eight. I will describe the elements of Count Eight in a little bit.

The second object of the conspiracy charged in Count Seven was to participate in a financial transaction that

involves the proceeds of a specified unlawful activity, knowing that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of those proceeds. The indictment charges violation of that federal statute as a substantive crime in Count Nine. I will describe the elements of Count Nine after discussing Count Eight.

The government need not prove that the defendant you are considering agreed to accomplish both objects in order to convict the defendant of the conspiracy to commit money laundering charged in Count Seven. Nor must you find that either object was actually accomplished. An agreement to accomplish either of the two objects is sufficient. However, the jury must all agree, unanimously agree on the specific object that the defendant you are considering agreed to try to accomplish.

Count Eight charges both defendants with committing the substantive crime of money laundering by engaging in financial transactions that involved the proceeds of illegal activity, specifically, the wire fraud charged in Count Six of the indictment, with the intent to promote the carrying on of further wire fraud transactions. In order to prove a defendant guilty of conspiring to commit this crime, the government must establish beyond a reasonable doubt the following elements:

First, that the defendant conducted or attempted to conduct a financial transaction, which I will define for you.

That financial transaction must in some way or degree affect interstate commerce;

Second, that the defendant conducted or attempted to conduct the financial transaction with property or funds that involved the proceeds of some form of specified unlawful activity;

Third, that the defendant engaged in or attempted to engage in the transaction with knowledge that the transaction involved the proceeds of some form of unlawful activity; and

Fourth, to engage in the financial transaction with the intent to promote the carrying on of specified unlawful activity.

The first element that the government must prove beyond a reasonable doubt in Count Eight is that the defendant conducted or attempted to conduct a financial transaction involving property constituting the proceeds of specified unlawful activity, namely, wire fraud.

The term "conduct" includes the action of initiating, concluding, or participating in initiating or concluding a transaction.

A "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property.

The term "financial transaction" means a transaction involving a financial institution which is engaged in, or the

activities of which affect, interstate commerce in any way or degree, or a transaction which in any way or degree affects interstate commerce and involves the movement of funds by wire or other means, or involves one or more monetary instruments, or involves the transfer of title to any real property, vehicle, vessel or aircraft.

As I have previously instructed, the term "interstate commerce" means the movement of goods, services, money, and individuals between states.

The second element that the government must prove beyond a reasonable doubt is that the property involved in the financial transaction constituted the proceeds of some form of specified unlawful activity, the.

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly through some form of unlawful activity, including gross receipts of such activity.

The term "specified unlawful activity" means any one of a variety of offenses defined by the statute. In this case, the government has alleged that the funds in question were the proceeds of wire fraud. I instruct that you, as a matter of law, wire fraud falls within the definition of "specified unlawful activity." However, it is for you to determine whether the funds were the proceeds of the unlawful activity charged in the indictment.

The third element that the government must prove beyond a reasonable doubt on Count Eight is that the defendant engaged in or attempted to engage in a financial transaction with knowledge that the transaction involved the proceeds of some form of unlawful activity.

To satisfy this element, the government must prove that the defendant you are considering conducted or attempted to conduct a transaction knowing that the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, federal, or foreign law. Thus, the government does not have to prove that the conspirators specifically knew that the property involved in the transaction represented the proceeds of the wire fraud alleged here. The government only has to prove that the defendant conducting or attempting to conduct the financial transaction knew that the transaction represented the proceeds of some illegal activity that was a felony.

I instruct you that, as a matter of law, in New York it is a felony to take or receive any money as interest on a loan at a rate exceeding 25 percent per year, although whether that occurred in this case is a matter of fact that you must determine for yourself.

The fourth element which the government must prove beyond a reasonable doubt is that the defendant you are

considering engaged in or attempted to engage in the financial transaction with intent to promote the carrying on of specified unlawful activity, namely, wire fraud.

To act intentionally means to act willfully, not by mistake or accident, with the deliberate purpose of promoting, facilitating or assisting the carrying on of a wire fraud. If you find that the defendant acted with the intention or deliberate purpose of promoting, facilitating, or assisting in the carrying on of a wire fraud, then the fourth element is satisfied.

Count Nine charges both defendants with committing money laundering by engaging in financial transactions that involved the proceeds of wire fraud with the intent to conceal the nature, source, location, ownership or control of those proceeds. In order to prove the defendant you are considering guilty of this crime, the government must establish beyond a reasonable doubt:

First, that the defendant conducted or attempted to conduct a financial transaction;

Second, that the defendant conducted or attempted to conduct the financial transaction with property or funds that involved the proceeds of some form of specified unlawful activity;

Third, that the defendant engaged in or attempted to engage in the transaction with knowledge that the transaction

involved the proceeds of some form of unlawful activity; and

Fourth, that the defendant engaged in or attempted to engage in the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of specified unlawful activity.

The first three of these elements are identical to the elements for the money laundering crime charged in Count Eight. Only the fourth element, regarding the purpose of the financial transaction, is different. I therefore am only going to provide additional instructions on that element.

With respect to the fourth element of the money laundering crime charged in Count Nine, the government must prove beyond a reasonable doubt that the defendant you are considering acted with knowledge that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of the proceeds of the specified unlawful activity, namely, wire fraud. The terms I have just used have their everyday meaning.

If you find that the evidence establishes beyond a reasonable doubt that the defendant you are considering knew of the purpose of the transaction in issue, and that he or she knew that the transaction was either designed to conceal or disguise the true origin of the property in question, then this element is satisfied.

However, if you find that the defendant knew of the transaction but did not know that it was either designed to conceal or disguise the true origin of the property in question, you must find that this element has not been satisfied and find the defendant not guilty on this count.

Proof that the defendant knew the purpose of the financial transaction was to conceal or disguise the location or ownership of the proceeds of specified unlawful activity may be established by proof that the defendant actually knew, or knew because of circumstantial evidence. In other words, you are entitled to find from the circumstances surrounding the financial transaction what the purpose of the activity was and that the defendant knew of that purpose.

Counts Eight and Nine of the indictment also charge the defendants with aiding and abetting money laundering crimes charged in those counts. I have previously instructed you on the law of aiding and abetting, and you should apply those instructions here.

Ladies and gentlemen, let's stand up and stretch, with a deep breath.

I now turn to the last counts, Counts Ten through Fourteen of the indictment that charge both defendants with violating a provision of federal law known as the Truth in Lending Act, often called "TILA." TILA requires a creditor to make certain disclosures to consumers at the outset of a

transaction, and those disclosures must accurately reflect the terms of the legal obligations agreed upon by the parties.

To find the defendant you are considering guilty of this crime, you must find that the government proved beyond a reasonable doubt that the defendant you are considering willfully and knowingly gave false and inaccurate information under the Truth in Lending Act.

I will discuss each concept in turn. The terms "willfully" and "knowingly" have the same meaning I have previously explained to you. The terms "false" and "inaccurate" have their everyday meaning.

In this case, the government has alleged that the defendants materially understated the true cost of the loans extended by the Tucker Payday Lenders by disclosing false and inaccurate information with respect to the finance charges and total payments due under loans extended by the Tucker Payday Lenders. I instruct you as a matter of law that finance charges and total payments due under a loan are disclosures required under the Truth in Lending Act (TILA). Whether the disclosures were false or inaccurate, however, is a determination you must make.

In order to find the defendant you are considering guilty in this matter, you must also determine that the false or inaccurate disclosures were material, meaning that the degree of falsehood or inaccuracy was such that it would be

material to a borrower. I previously explained the meaning of "material," and you should apply those instructions here.

So that completes the 14 counts. You will go through the verdict sheet in the order in which the questions are presented. And, basically, it has each of the 14 counts listed, and then under each of them, the name of each of the defendants and a spot for you to check guilty or not guilty. That's what the verdict sheet consists of.

Once you complete the verdict sheet as to questions 1 through 14, there is an additional question. If, but only if, you have found any defendant guilty on any of the Counts Two through Four, you should respond to the following question on the verdict form: "Has the government proven beyond a reasonable doubt that, at the time of collection of any of the loans you found as the basis for a guilty verdict on Counts Two through Four, the lender, in fact, was defendant Scott Tucker or an entity owned or controlled by him?" You are to answer that question "Yes" or "No."

For the purposes of this question, and solely on the issue of control, you should consider the following factors on the issue of control: whether Mr. Tucker was the source of funds for the loans, whether he bore the risk of non-repayment of the loans, and whether he had the power to direct the activities of the entity, including day-to-day operations, finances, lending decisions, distribution of profits, hiring

and termination of employees, advertising and solicitation of customers, and banking and other third-party relationships.

Venue. With respect to any count you are considering, the government, in addition to proving the essential elements of that charge, must also prove that at least one act in furtherance of the charge occurred in the Southern District of New York. This is called establishing venue. The Southern District of New York includes all of Manhattan and the Bronx, as well as Westchester, Rockland, Orange, Putnam, Dutchess and Sullivan Counties.

With respect to Counts One through Six and Counts Ten through Fourteen, this means that, with regard to each count, you must decide whether the crime charged in a particular count, or any act committed to further or promote the crime, occurred within the Southern District of New York.

With respect to money laundering counts charged in Counts Eight and Nine, venue is proper here in the Southern District of New York if you find that a financial or monetary transaction was conducted here, or if you find that the wire fraud charged in Count Six, or any act committed to further or promote the wire fraud charged in Count Six, occurred here, if the defendant participated in the transfer of the proceeds of the wire fraud from the Southern District of New York to where the financial or monetary transaction was conducted.

With respect to the conspiracy to commit money

laundering charged in Count Seven, venue is proper here in the Southern District of New York if you find that venue is proper here for either Counts Eight or Nine, or if an act in furtherance of the conspiracy took place here.

Unlike the elements of the offenses which must be proven beyond a reasonable doubt, the government is only required to prove venue by a preponderance of the evidence. A preponderance of the evidence means that it is more probable than not that some act in furtherance of the crime you are considering occurred in this district.

A few concluding remarks.

The possible punishment of a defendant in the event of a conviction is not a proper consideration for the jury and should not, in any way, enter into or influence your deliberations. The duty of imposing sentence belongs to the Court and the Court alone. Your function is to weigh the evidence and to determine whether the defendant is or is not guilty upon the basis of evidence and the law.

Therefore, I instruct you not to consider possible punishment or punishment in any way in your deliberations.

You are about to go into the jury room to begin your deliberations. I will have exhibits actually received into evidence go into the jury room with you. They will come in in a few minutes.

With regard to the recordings, if you want to hear the

recordings, we will have you come into the courtroom to play them.

If you want any testimony read back, please send out a note specifying what you want to hear and we will arrange either to have it read back in the courtroom or brought in to you. Please be as specific as possible in requesting portions of testimony. If you want any further explanation of the law as I have explained it to you, you may also request that.

Your requests for testimony -- in fact, any communication with the Court -- should be made in writing, signed by your foreperson, and given to the deputy marshal. In any event, do not tell me or anyone else how the jury stands on any issue. In other words, do not tell me or anyone else what the vote is until after a unanimous verdict is reached.

As I said, I am going to send in two copies of the indictment. That's only an accusation and it's not proof of anything. But you will have a copy of the indictment, you will have two copies of these jury instructions, and everyone will have a copy of the verdict sheet, although only one is signed and returned.

Some of you have taken notes during the trial. I want to emphasize that notes are simply an aid to memory. Notes that any of you have made may not be given any greater weight or influence in determining the case than the recollections or impressions of other jurors, whether from notes or memory, with

respect to the evidence presented or what conclusions, if any, should be drawn from the evidence. Any difference between a juror's recollection and another juror's notes should be settled by asking to have the court reporter read back the transcript, for it is the court record rather than any juror's notes upon which the jury must base its determination of the facts and its verdict.

As I said, you will get the verdict form to record your verdicts. You should proceed through the questions on the verdict form in the order in which they are presented.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion that in your good conscience appears to be in accordance with the evidence and the law.

Please remember, you are not partisans. You are

judges -- judges of the facts -- not representatives of a constituency or a cause.

Again, each of you must make your own decision about the proper outcome of the case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict. If at any point you find yourselves divided, do not inform the Court or anyone of how the jurors are split. Once you have reached a verdict, do not announce what the verdict is until I ask you to do so in the courtroom.

Once you get into the jury room, you may select a foreperson who will be responsible for signing all communications to the Court on behalf of the jury and for handing them to the deputy marshal during your deliberations. This should not be understood to mean that an individual cannot send the Court a note should the foreperson refuse to do so.

I will give you the typed text of these instructions, as I said, but it's possible that there is a slight variance between the words I have spoken and the typed text that I will give you. It is the words I have spoken that control if you find any variance.

After you have reached a verdict, your foreperson will advise the deputy marshal outside your door that you have reached a verdict.

I will stress that each of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Your function now is to weigh the evidence in this case and to determine whether the government has or has not proven the guilt of defendants Scott Tucker and Timothy Muir beyond a reasonable doubt with respect to each of the 14 counts in the indictment.

You must base your verdict solely on the evidence or lack of evidence in this case and these instructions as to the law, and you are obligated under your oath as jurors to follow the law as I have instructed it, whether you agree or disagree with the particular law in question. I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a verdict in accordance with the evidence and the law.

Finally, let me state that your oath sums up your duty, and that is, without fear or favor to anyone, you will well and truly try the issues, based solely upon the evidence and this Court's instructions as to the law.

Ladies and gentlemen, this concludes my instructions. You may stand up and stretch while I meet with the lawyers at the sidebar, and please do not discuss the case until you're inside the jury room.

(At the sidebar)

THE COURT: From the government.

MR. SCOTTEN: Nothing, your Honor.

THE COURT: From Mr. Tucker.

MR. GINSBERG: Nothing, your Honor.

THE COURT: From Mr. Muir.

MR. BATH: No, sir.

THE COURT: What I am going to do is instruct the alternates that they are still on jury duty. They cannot discuss the case among themselves or with anyone, follow my instructions. They are subject to recall.

All right. That's about it.

You can return to your seats.

(In open court)

THE COURT: Ladies and gentlemen, I should tell you that during deliberations, if someone steps out of the room for any reason, you cannot deliberate unless all the jurors are present. So, for example, if you decide to take a few minutes to step out of the jury room, then you suspend your deliberations, unless and until everyone is present.

If the jury has not reached a verdict, I will call you back in around five minutes to 5 tonight. All right.

At this point, with regard to Cecilia Rosa, Nuria Cornielle, and Glenn Stockton, you are not excused from this jury as of yet. It is possible under the law that you could be

called back to participate in deliberations. So for that reason, until this jury has reached a verdict, you are still on jury duty and subject to recall. You still must follow the instructions that I have given you about not discussing the case among yourselves or with anyone, not doing any research, not doing any investigation, because you may be recalled. I will promise you, however, that when and if the jury reaches a verdict, Flo, my deputy, will give you a call at the phone number that you have given her to let you know what the verdict is, and also to let you know that you are relieved of this obligation not to discuss the case.

So with great admiration to you for your hard service, your being here, your paying attention, being good-spirited and good-natured, I am going to allow you at this point to return to the jury room to gather your belongings and to depart.

So, again, your service is most admirable. You should be proud of what you have done, and you have my appreciation and my admiration. Thank you.

Please leave your notebooks in the jury room.

(Alternate jurors exit courtroom)

THE COURT: I ask the deputy marshal to step forward to take the oath.

Please come into the well.

(Marshal sworn)

THE COURT: Ladies and gentlemen, you may now discuss

the case among yourselves.

Thank you.

(At 11:07 a.m., the jury retired to deliberate)

THE COURT: Please be seated.

Let me begin by saying that this case was actually a pleasure to preside over because it was so well presented by the lawyers on both sides. The openings and closings, the directs, the crosses, were a pleasure to watch, and I saw some very fine lawyering in this courtroom, which is always especially enjoyable. And I realize that this case, like many trials, but probably more so than most trials, what goes on in the courtroom is the tip of the iceberg, because of the number of charges, the number of documents, etc., the amount of preparation on both sides was extraordinary. You have worked long and hard on this case, over a considerable period of time, and you have my eternal respect.

Each of the lawyers in this case, Mr. Scotten, Mr. Velamoor, Mr. Ravi, Mr. Ginsberg, Mr. Roth, Mr. Bath, and their colleagues and associates, are all welcome in this courtroom in the future. I thought everyone conducted themselves consistent with the highest aspirations of this profession. I really do. And in a long trial it's possible that things can get difficult or tense at times, but I thought everybody acted in a professional manner. And my thanks and respect also go to Ms. Limani, also for her hard work in this case.

I make no apologies for being the traffic cop in this case. That's what I get a paycheck for doing. That's what my job is. We all have a role. My role is not to be your best friend. My role is to do what I need to do, and I make no apologies for it, but I just assure you that if anybody at any time ever had a wounded ego or bruised feelings, you shouldn't. It's just part of what a trial judge needs to do to keep a case moving because, as you know, I am obsessed with the people in the jury box. I am obsessed with not having their time wasted and that the case goes in in a reasonably smooth fashion without imposing on their time.

Now, let me turn to a couple of housekeeping things. I subscribe to what I call an eight-minute rule, which is you have to be able to get back to this courtroom within eight minutes. That means if you're a prosecutor, you can't go back to your office, or a defense counsel. There isn't going to be enough time to get back here in eight minutes. You have to make sure that you're in contact with Flo, and there should be someone from each team who is in the courtroom or extremely nearby. So if we get a note, I am going to have it shown to you and I am going to get you working on the note.

If it's a readback, what you are going to do is you are going to go through the transcript and you are going to figure out what you think is appropriate, see whether you can agree on it, and then we will have the court reporters prepare

a redacted transcript, and by redacted, there is colloquy at the sidebar that comes out, if there is an objection sustained, the question and answer will come out, that sort of thing. And then I will come down, supervise the process, and we will send the transcript into the jury room.

I am going to require that both sides confer right now on the received exhibits, and you are going to tender them to my deputy, who is going to tender them to the deputy marshal to be brought into the jury room. And you heard what I said about the recordings, how we will deal with that.

Thank you all very much.

MR. SCOTTEN: Thank you, your Honor.

MS. LIMANI: Thank you, your Honor.

(Recess pending verdict)

(Jury not present)

THE COURT: So I have two notes from the jury, which have been shared with counsel.

Court Exhibit 22: "Judge, can we get Tim Muir's transcript, please, October 11, during cross-examination, when he stated that he knew that the interest rates were too high."

Note number 23: "Can we have the transcripts for the recordings, please."

I gather the parties have clipped pages 2901 through 2903, is that correct?

MR. VELAMOOR: Judge, I think both parties agree that

the jury should be provided with testimony beginning on 2901:12. So line 12 on page 2901. There is a disagreement as to the end point.

THE COURT: What is the position of the government?

MR. VELAMOOR: Our position is that the jury should be read back 2901, line 12, through 2902, line 16.

THE COURT: And what is the position of the defendants?

MR. BATH: We believe it should end at 2903, line 9.

THE COURT: Just give me a moment, please.

Starting point on 2901 again, which line?

MR. VELAMOOR: Line 12.

THE COURT: You want to end it where, Mr. Bath?

MR. BATH: 2903, line 9.

THE COURT: And the government wants to end it at?

MR. VELAMOOR: 2902:16.

THE COURT: I am going to agree with Mr. Bath.

Ordinarily, my preference would be to send this into the jury room. I am going to have the court reporter read it, 2901, line 12, through 2903, line 9.

MR. VELAMOOR: We ask, if the Court is inclined to include more, we would ask that it at least go through 2903:21 to complete that exchange.

First of all, we are disagreeing with Mr. Muir over the question and whether or not the exchange continues.

And finally, it resolves with him acknowledging the New York attorney general's position.

THE COURT: Through what, line 21?

MR. VELAMOOR: Which was ultimately the question.

THE COURT: I think that's right. If I am going to include down to line 9, then I think it's fair to include down to line 21.

Any objection, Mr. Bath?

MR. BATH: I am reviewing that right now.

I disagree with that position, Judge.

THE COURT: In other words, you want the jury to know what Mr. Muir's position was, but not the position of the statutory officer enforcing the New York statute.

MR. BATH: I don't read it that way. The question posed about New York was that was the position in New York. I guess you can read that to be the AG's position or it could be the position of New York under the law. I am reading it as it's the New York law, not the AG. When the government transitions to the AG, that's a different topic. That's my analysis.

THE COURT: Here's the thing. I think it's a close question. The government may be right that the readback should end at 2902:16. But if I am going to go through 2903:9, the Court says to Mr. Muir, "That was certainly the position of New York, right? And you can say yes, it was, no it wasn't, but

you can't disagree with the question." And he says, "Then I say no, it wasn't." And apparently he acknowledged later on that he knew that it was the position of the attorney general of New York, that it was their position.

MR. BATH: I understand that, Judge. If I could have just second one.

THE COURT: Sure.

MR. BATH: We will take it all, then.

THE COURT: That's fine.

MR. BATH: Could I also make an additional request? I would ask then that Mr. Muir's questioning by me on redirect, in response to cross-examination, also be read back to the jury.

THE COURT: I am going to decline to do that because the jury was very specific about what they wanted. If they had said, I want the testimony on a particular subject, I would have given them the direct, the cross and the redirect, but that's not what they asked for. So thank you.

Bring our jury in, please.

MR. VELAMOOR: There is a second note I believe.

THE COURT: The second note, Court Exhibit 23, "Can we have the transcripts for the recordings, please."

Any objection?

MR. VELAMOOR: I believe there is, not from us, but there is an objection from defense.

MR. GINSBERG: The transcripts are not in evidence. That's the problem.

THE COURT: They are an aid to recollection. I will remind them that it is the recordings that are the evidence. The transcripts are an aid to listening to the tapes and if they want to listen to the tapes, they can.

However, this jury has listened to the tapes, with the transcript in front of them as an aid to listening, and if this is what they want, so long as they understand the limitation of the transcript, it seems appropriate.

THE COURT: OK. Bring our jurors in, please.

(Jury present; time noted: 2:28 p.m.)

THE COURT: Good afternoon.

Could the foreperson please raise their hand.

Excellent.

I have the two notes. I am going to ask you going forward, remember to sign the note for us. Thank you.

So with regard to the first note, "Judge, can we get Tim Muir's transcript, please, October 11, during cross-examination, when he stated that he knew that the interest rates were too high."

I am going to ask our court reporter to please read back that portion of the cross-examination.

(Record read)

THE COURT: There is a second note which reads, "Can

we have the transcripts for the recordings, please."

Now, ladies and gentlemen, as you remember, I know you know this, the recordings themselves are the evidence, the transcripts are an aid to listening to the tapes. I will allow you to take the transcripts back to the jury room with you, as long as you understand that instruction, and it's your recollection of what you heard on the tapes that controls.

All right. With that, thank you, ladies and gentlemen.

(Jury resumes deliberations; time noted: 2:35 p.m.)

THE COURT: Thank you.

MR. VELAMOOR: Judge, it looks like some of them took their binders, some didn't. Should we just leave it at their choice?

THE COURT: Absolutely.

So the record is clear, the binders have remained at the jurors' seats in the courtroom since they were first made available to the jurors quite some time ago. And just now, after my instruction, a couple of jurors took binders back with them. It looks like, I can't see for sure, but several jurors, I see at least three, who did not. There may have been more than that. I just may not be able to see the angles. So be it.

(Recess pending verdict)

THE COURT: The note has been shown to counsel, I am

advised. It's been marked as Court Exhibit 24.

"Hello, Judge. Can you give further clarification on what collection of unlawful debt means?" Collection of unlawful debt is in quotes. "Still unclear to us."

"Also, can you provide more clarification on elements four and five of Counts Two." It says "Counts Two," and then it says "(2-4)." So I think they are talking about elements four and five of Counts Two through Four, is the way I interpret it.

So let me hear what the government has to say, and then I will hear what the defendants have to say.

MR. SCOTTEN: Your Honor, I think we are broadly in agreement that, given that the jury's request is not that specific yet, the Court should reread its instructions in these areas.

I think we are also agreed that for elements four and five of Counts Two through Four, the Court should reread those elements in their entirety, which are on pages 33 through 35, and they are clearly labeled in the Court's instructions as those elements.

With respect to unlawful debt, there is no definition we are aware of given for "collection of." But the Court defines unlawful debt, which we at least imagine is the contentious part, pretty thoroughly.

The parties are also agreed that that definition

begins on page 29 of the Court's instructions, at the bottom of the page, in the last paragraph, beginning with the second sentence of that paragraph, "For purposes of this case, an unlawful debt," and then the Court goes on.

The government would ask the Court to read what we think is the entirety of its definition, since the jury's question is pretty vague and general, that we believe runs to page 31, ending at the end of sort of the first paragraph that carries over. So ending "to make such loans, not continuing on where it says "the focus of this sixth element."

THE COURT: Let me understand your position. Let's see now.

Let me hear the defendants' position.

MR. GINSBERG: We agree with the government on the first issue, your Honor, elements four and five.

THE COURT: That I should read the entire instruction on four and five again, is that what you mean by that?

MR. GINSBERG: Yes.

THE COURT: All right.

MR. GINSBERG: On the second question, we believe that --

THE COURT: The second question is elements four and five on Counts Two through Four.

So the first question, go ahead.

MR. GINSBERG: The first question, we believe that

your Honor should read the last paragraph on page 29, starting where it says, "For purposes of this case, an unlawful debt," and end at the top of page 30, where it says "under state law." We think the rest of it is not what the jury is asking, the specific rates in each state.

THE COURT: Let me hear from Mr. Bath.

MR. BATH: Not being familiar with your Honor's procedure, I don't why the Court couldn't maybe just refer them to those pages. They can read. We have given these instructions. I understand that they are asking for more clarification. I'm not sure just reading it again to them versus just telling them they can read whatever pages, or just refer them back generally to the instructions, I don't know that we are clarifying it. Maybe that makes us feel like we are answering their question, but I'm not sure we are. I would just ask that you tell them they have got the instructions, and refer them back to the instructions they have.

THE COURT: Thank you.

The one point where I am not in agreement with either side is -- the question reads, "Can you give further clarification on 'collection of unlawful debt' means. Still unclear to us."

I think the jury sees the world slightly different than a bunch of lawyers, and maybe even a judge who has been sitting here for several weeks. I am reading something into

the word "collection" of. That's one thing that the trial evidence didn't really focus on a whole lot.

I think I agree with the defendants that with regard to the unlawful debt portion, it's beginning on the bottom, the last carry-over paragraph on 29 up to that carry-over sentence at the top of 30. That's unlawful debt.

I would say, lawmakers did not make the making of a loan the federal crime. The federal crime is the collection of -- making an unlawful debt the federal crime. The federal crime is the collection of the unlawful debt. And then say, unlawful debt is as defined here, and I am kind of indifferent whether I read them the instructions again or I hand it to them. But I think that the question calls for focus on the word "collection," which is to be given its ordinary and customary meaning. It's not a term of art.

The point being the making of a loan is not the crime, as Congress and lawmakers have framed this statute, it is the collection of the unlawful debt. That's the way I read the plain language of the statute, and I think -- I may be wrong, I may be overreading the question, but I don't want to under-read it and I don't want to overread it. So that's what I propose to say.

Any objection from the government?

MR. SCOTTEN: We agree with the Court's reading. We are just being very cautious to expand, but no objection.

THE COURT: Mr. Ginsberg.

MR. GINSBERG: We would stand on our previous position, your Honor.

THE COURT: Mr. Bath.

MR. BATH: We have no objection.

THE COURT: So bring our jury in, please.

The pages, again, on the fourth and fifth element are where?

MR. SCOTTEN: 33 to 35, your Honor.

THE COURT: Thank you.

(Jury present; time noted: 3:20 p.m.)

THE COURT: Thank you, ladies and gentlemen.

So I have the note which reads, "Hello, Judge." And I say, hello, jury.

"Can you give further clarification on what 'collection of unlawful debt' means? Still unclear to us."

Let me turn to that portion before I turn to the second question on there.

Congress and lawmakers made it a crime and made it unlawful for any person, through collection of an unlawful debt, through an enterprise engaged in or the activities of which affect interstate commerce.

Actually, I am saying that incorrectly. Let me start from the beginning because what I just said to you is wrong, and I want to make sure I get it right.

So the law is that it shall be unlawful for any person, employed by or associated with any enterprise, engaged in or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such an enterprise through the collection of unlawful debt.

So you notice that the way that reads, it's not the making of the loan that is the crime; it's the collection of the unlawful debt.

Now, what is an unlawful debt? It's defined on the bottom of page 29 and up to the top of page 30 of the instructions.

For the purposes of this case, an unlawful debt means a debt that is unenforceable under state law because of the laws relating to usury -- and I explained what usury is elsewhere -- and which was incurred in connection with the business of lending money at a rate usurious under state law, where the usurious rate is at least twice the enforceable rate under state law.

Now, you look at the instructions, there is an example given, that may or may not be useful to you, but that's the definition of unlawful debt. And it's the collection of an unlawful debt which is rendered unlawful, when the other elements of the crime are met. By just focusing on that element, I don't want you to ignore the other elements that I

charged you on for Count One and for Counts Two through Four.

Now, the second part of your question is, "Can you provide more clarification on elements four and five of Counts Two" -- I read this to mean Counts Two through Four.

So the fourth element the government must prove with respect to Counts Two through Four is that the defendant willfully and knowingly engaged in the collection of an unlawful debt. Willfully, knowing and unlawfully have the same meaning on which I have instructed you previously.

For each of Counts Two, Three and Four, the indictment alleges five specific unlawful debts that the defendants are alleged to have engaged in collecting. The government does not need to prove the existence of two or more collections of unlawful debt forming a pattern. Rather, each individual instance of collection of an unlawful debt is a separate substantive crime.

So on each of the counts, you have to unanimously agree that there was at least -- these are the substantive counts -- that there was at least one unlawful debt that the defendant who you are considering willfully and knowingly engaged in the collection of. And you must unanimously agree that the government has proven beyond a reasonable doubt that the defendant engaged in collecting at least one particular debt named in a count before you may convict the defendant of that count. In other words, it's not good enough if half of

you think it was this particular debt and the other half of you think it was a different debt. You all have to agree on at least one unlawful debt and the collection of one unlawful debt under that count.

The fifth element the government must prove with respect to Counts Two through Four is that the defendant conducted or participated in the conduct of the affairs of the Tucker payday lending organization, directly or indirectly, through the collection of unlawful debt.

It is not enough that there be an enterprise and that the defendant engaged in the collection of unlawful debt. More is required. There must be a meaningful connection between the defendant engaging in the collection of unlawful debt and the affairs of the enterprise. The defendant must have conducted or participated in the enterprise by collecting or aiding in the collection of unlawful debt. It is not necessary, however, that the collection of unlawful debt directly further the enterprise's activities. It is enough that the defendant's collection of unlawful debt was related to the enterprise's activities.

The fifth element also requires that the defendant have some role in the operation, direction or management of the enterprise. To conduct or participate in the conduct of the enterprise means the defendant must have played some part in the operation or management of the enterprise. The government

is not required to prove that the defendant was a member of upper management, and an enterprise is operated not only by those in upper management, but also those lower down in the enterprise who act under the direction of upper management. It is sufficient if you find that the defendant provided substantial assistance to those who conducted the enterprise, and thereby was involved in playing a part in the direction of the affairs of the enterprise through collection of unlawful debt.

Thank you, ladies and gentlemen. You may return.

(Jury resumes deliberations; time noted: 3:30 p.m.)

THE COURT: Anything further?

MR. SCOTTEN: No, your Honor.

THE COURT: We are adjourned. Thank you.

(Recess pending verdict)

THE COURT: I have an envelope that I understand came in at 4:10 p.m., and I have been advised that it's the jury's verdict.

Please bring our jury in.

(Jury present; time noted: 4:22 p.m.)

THE COURT: Madam foreperson, I have an envelope here. Does this contain the jury's verdict?

THE FOREPERSON: It does.

THE COURT: Is it signed and dated by you?

THE FOREPERSON: Yes.

THE COURT: Is the verdict unanimous?

THE FOREPERSON: Yes.

THE COURT: All right.

Madam Deputy, if you will return this to the foreperson and take the jury's verdict.

If you'd please stand.

THE DEPUTY CLERK: As to Count One: Conspiracy to collect unlawful debts.

As to Scott Tucker, guilty or not guilty?

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir, guilty or not guilty?

THE FOREPERSON: Guilty.

THE COURT: Count Two: Collection of unlawful debts (Ameriloan, United Cash Loans and US FastCash).

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: As to Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Three: Collection of unlawful debts (500 FastCash).

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Four: Collection of unlawful

debts (One Click Cash).

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Five: Conspiracy to commit wire fraud.

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: As to Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Six: Wire fraud.

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Seven: Money laundering conspiracy.

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Eight: Promotion money laundering.

As to Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Nine: Concealment money laundering.

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Ten: False Truth in Lending Act disclosures (Ameriloan).

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Eleven: False Truth in Lending Act disclosures (United Cash Loans).

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Twelve: False Truth in Lending Act disclosures (US FastCash).

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Thirteen: False Truth in Lending Act disclosures (500 FastCash).

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Count Fourteen: False Truth in Lending Act disclosure (One Click Cash).

Scott Tucker.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Timothy Muir.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Has the government proven beyond a reasonable doubt that, at the time of collection of any of the loans you found as the basis for a guilty verdict on Counts Two through Four, the lender, in fact, was defendant Scott Tucker or an entirety owned or controlled by him?

Yes or no.

THE FOREPERSON: Yes.

THE COURT: All right. Thank you, Madam Foreperson.

Madam Deputy, if you would please poll the jury.

(Jury polled; each juror answered in the affirmative)

THE DEPUTY CLERK: The jury has been polled.

THE COURT: Any objection to my discharging the jury?

MR. VELAMOOR: No, your Honor.

MR. GINSBERG: No, your Honor.

MR. BATH: No, sir.

THE COURT: Ladies and gentlemen, there was a judge who sat on this court from 1950 to 1988. His name was Edward Weinfeld, and he had a very peculiar custom. At the end of a jury trial, he would say to the jurors, "I will not thank you." Everybody thought this was odd till he went on to speak. Because to thank you is to cheapen what you have done. You have come here as citizens of the United States. You were called upon to serve, and you came and you served, and your service was long and it was hard.

You are people who quite possibly would never have met one another had you not been called to sit on this jury. You came. You came and you worked hard. You came when you were asked. You arrived on time. You got back from lunch on time. You didn't complain. You served. This is something you can be proud of for the rest of your lives. And every word I say to you I would say to you even if your verdict was very different than the one you returned. I am indifferent to what your verdict is. But I am in awe of your service, important service, hard service, difficult service. You know that, and I know that.

It's hard not just because it's difficult sitting and

listening to problems that you're not involved in, but it's difficult also because it's draining on you, because you know that the stakes are high for all concerned. That's part of what makes it difficult. But you're willingness to come and serve keeps our American judicial system, our jury system, alive, and years from now you can look back on this with great, great pride.

Now, we are coming into the fall holiday season. You are going to be at Thanksgiving parties and the like, and it's going to come to pass that you will encounter someone who you know, maybe a friend, maybe a cousin. I don't want you to be mean to anybody, but I want you to think back on your service, and if this friend or cousin tells you how they plan to beat their way out of jury service, I want you to think of me, I want you to think of your own service, and in a very kind way let them know that you don't think that's funny. It's not any funnier than somebody saying, I just cheated on my income tax, or I stole, or I did something else that was wrong.

You see, if we didn't have juries, I want you to think of how it would work in this country. We would have men and women who wear black robes deciding guilt or lack of guilt in a case like this. And no matter how fair that judge tried to be, or was in fact, there would always be lingering questioning in somebody's mind. Who is that judge? Who appointed him or her? Where did they grow up? What was their life about? What

prejudices do they hold? But when you have a system of twelve people, from all walks of life who, as I said before, never would have met one another, and they come together and act as a jury, they act in unison, it's as fair as we are going to get in this very imperfect world that we live in. And you have been the ones who acted together, consistent with your oath.

So one other point. I have told you all along, you're free to talk about the case. One piece of advice I am going to give you, one comment I will make, is some jurors who have served in this courthouse have decided on their own to follow a rule, and the rule goes like this. They will tell everybody about what happened in the courtroom, they will tell them what the outcome of the case was, they will tell them about the wonderful judge who presided in the case, or the not so wonderful judge who presided in the case, about the lawyers, about the deputy, about the witnesses. But the one thing they won't speak about is what goes on in the jury room between their fellow jurors, because that is something very personal and something very private. You can do what you want, but that's a rule that you may want to consider following, keeping that to yourself and your fellow jurors.

Now, life is strange and it may come to pass that we cross paths again. Maybe on the subway. I don't know where it will be. But if that should come to pass, I hope you will please remind me of where we first came to know one another.

So, ladies and gentlemen, with the utmost of admiration, you are discharged and you're free to go. Your service is complete.

(Jury excused)

THE COURT: Any applications?

MR. VELAMOOR: Yes, your Honor. We seek remand as to both defendants.

THE COURT: Let me hear the basis for your application.

MR. VELAMOOR: The basis is as follows.

First of all, as the Court knows, the burden is now shifted to both defendants to establish that they should remain on bail. We seek remand primarily based on a risk of flight.

Now, we recognize in making this application that both defendants have family ties here in this country, but we think this case is overcome by other factors. Specifically, as the Court knows, the crimes for which they were convicted are very serious. They carry substantial terms of incarceration. And they both have gone to trial with the expectation of being found not guilty, and, therefore, this is a significant change of circumstances in their minds.

I think it's also the case that the crimes were serious in terms of the lending activities, but as the Court knows from having presided over this trial, there were also crimes primarily of disobedience and disregard to courts, and a

disregard of the ability of courts to control their activities, the legitimacy of courts in stopping them from engaging in activities that they thought they should be able to continue doing for years. In that capacity, they filed false affidavits in courts, they made false representations to courts. I think all of that conduct bears on a greater risk of flight.

There are also, I think, specific factors of which we would point to as to each of the defendants.

With respect to Mr. Tucker, in particular, we have frozen all the assets that we know about, but we don't believe, by any stretch of the imagination, we found all of the moneys that flowed to him from this conspiracy. So we think he has access to additional financing.

There is an episode that we have become aware of during the pendency of this case that adds to our concerns. Specifically, we learned, for example, that Mr. Tucker had a first-class flight from Kansas City to New York paid for by an associate of his Mr. Feingold, who we understand to be someone with a criminal record of his own. That he has access to financing from that individual, perhaps other individuals, furthers our concerns that this defendant continues to have access to money and financing that can be used to flee if he so desired.

THE COURT: What is his present bail conditions?

MR. VELAMOOR: We will pull those up in a second.

THE COURT: That's fine.

Go ahead. Talk about Mr. Muir.

MR. VELAMOOR: Concerning Mr. Muir, we understand that he has family here in the United States, but we also believe that he is not a citizen of this country at this point. Therefore, he unlike Mr. Tucker faces the risk of deportation after --

THE COURT: Say this again.

MR. VELAMOOR: Mr. Muir we understand not to be a citizen of this country, and therefore we believe faces the risk of deportation, based on the crimes for which he has been convicted, after completing service of any term of imprisonment that the Court imposes.

So for those reasons, we will pull up the bail conditions as soon as we can, but we believe --

THE COURT: I may be able to get them.

MR. VELAMOOR: So for these reasons, given the defendants' burden to prove by clear and convincing evidence that they are not a risk of flight, we don't think they could be meet that burden.

THE COURT: Let me look at the bail conditions.

It looks like, as to Mr. Muir, a $400,000 bond, to be signed by February 23, 2016, cosigned by defendant's wife by March 5, 2016, secured by defendant and defendant's wife interest in Overland Park, Kansas. I assume residence.

Surrender passport and make no new applications. Travel to District of Kansas, Western District of Missouri, Southern and Eastern Districts of New York.

As to Mr. Tucker, it looks like a $2 million personal recognizance bond, to be signed by February 23, 2016, and cosigned by three financially responsible persons by March 5, and secured by property at 2405 West 114th Street, Leawood, Kansas, owned by defendant and his wife. Surrender passport and make no new applications. Travel restricted to the same districts as in the case of Mr. Muir. Defendant will not use any private plane, will transfer control and custody of any private plane to a third party acceptable to the government.

Now, I don't know whether there was any modification after that. I will ask defense counsel whether they are aware of any. And I will hear from Mr. Tucker's counsel.

MR. GINSBERG: First, your Honor, I'm not aware of any modifications from the time I entered the case.

I understand what the government's argument is. However, as your Honor heard during the course of this trial, and probably knew from pretrial motions, these proceedings, before even the criminal charges were brought, have been going on for a long time. Mr. Tucker was well aware, given the FTC lawsuit, and then the criminal indictment, that he faced the possibility of conviction. However the government wishes to frame what his beliefs were, it was his hope that he was not

going to be found guilty.

He has travelled back and forth to New York, and other places that the Court permitted, on many occasions. He has a family. He has a wife and two children. His house is part of the bail package.

THE COURT: How old are the children?

MR. GINSBERG: 16 and 18, your Honor.

THE COURT: Go ahead.

MR. GINSBERG: He obviously attended all of the proceedings here and the trial knowing what the evidence was as it was being presented.

In terms of the two more specific allegations, that is, the government has some, I think at the moment, unfounded belief that he has assets that he could use if he remained out on bail, and I suppose they suggest by that that he could use to flee, not just this jurisdiction and Kansas, but the country. I don't know that there is any basis for that whatsoever. The government might have a belief, but I don't believe there is any evidence of that.

As to the one flight that was paid for by his friend and was a first-class ticket, whatever that amount of money was, the cost of a flight from Kansas to New York round-trip is far different from what kinds of financial resources Mr. Tucker or any defendant would need if he intended to leave the United States and to live elsewhere. Certainly, we have no reason to

believe that that would happen, but even just looking at the financial factors, I don't believe that is a basis to change his bail conditions.

Beyond that, your Honor, the Court has the ability to add additional conditions to the current bail and modify it in a number of ways. The Court could order home confinement, the Court could order electronic monitoring and more regular reporting to pretrial services, and all kinds of things that I think would ensure the Court that he is being watched on a regular basis and would not have really the ability to flee. I am sure it's happened in the past, but I think your Honor could impose conditions that are stricter than they are now and would ensure his compliance with any new bail conditions.

But overall, your Honor, I think that the fact that this matter, the whole matter, that is, all of the allegations had been going on for such a long time, and that all during that period of time, frankly, even before the FTC decided to freeze his assets, if Mr. Tucker wanted to, he could have left the United States. He might have had more assets to take with him before they were frozen by the FTC. He had the ability to run up to this case.

I should also make the Court aware that prior to the charges being filed in this case, when Mr. Tucker had counsel, private counsel both in Kansas and in New York, there was a very long process, I am not sure exactly the amount of time,

but months and months, if not more than a year, in which his lawyers engaged with the United States Attorney's Office in an effort to convince them not to bring charges. They were unsuccessful in doing that. They were told they were going to be unsuccessful in doing that. There was an initial indictment in this case, which charged only a few of the counts, then a superseding indictment was brought, and during that entire time, he continued to remain in the United States, and he continued to remain to obey the conditions of his bail.

THE COURT: The elephant in the room, of course, is that was at a point in time before he was convicted. He put on a substantial defense, and the jury has convicted him, and now the calculus changes.

MR. GINSBERG: That's always the case when there is a conviction, your Honor. I understand that. I don't think, however, that given the way that the statute is written, that the Court could not set additional conditions, modify the current bail in such a way as to ensure to the Court that Mr. Tucker will return, will not leave the country and will come back for his presentence interview and come back for his sentence.

I think that's particularly so, besides all the other things, I want to stress again his family. It's one thing if you have an individual who doesn't have a family, and whether they have a lot of money or a little money, they could take off

and be on their own someplace else in the world. But when you have a wife and two children, I think that becomes much less likely that you would do that, for all the obvious reasons.

So I would urge your Honor to impose additional conditions on Mr. Tucker, such as those I had recommended and anything else your Honor believes would be appropriate, and I think that would ensure that he returns to court when required.

THE COURT: All right. Let me hear from Mr. Bath.

MR. BATH: Thank you, Judge.

Mr. Muir was born in -- there have been no modifications. Mr. Muir was born in Australia but has lived in the United States since 1978. I believe he is a lawful permanent resident, is the correct term. He of course is married. His wife Stephanie is a lawyer in Kansas City. Mr. Muir's mother lives in Kansas City. Stephanie's mother is from Kansas City. He has an eight-year-old daughter and a 12-year-old stepdaughter at home. He has, frankly, like Mr. Ginsberg said, I think every reason to continue to comply with his bond conditions, to make sure he can go home and take care of his family and make sure arrangements are made anticipating that he could very well be going to prison.

I think, like Mr. Ginsberg said, I think there can be modifications made. Mr. Muir has shown up for every court appearance. He has made all of the appointments with presentence. They come and visit his house, etc., etc. I

recognize the calculus has changed, but I think he has motivations and you have assurances that he will appear for all future court appearances.

THE COURT: I am going to allow the two defendants to remain free pending sentencing, and I am going to impose changed conditions: Home confinement with electronic monitoring and strict supervision.

This is not a situation where there will be modifications to go out of the home for employment purposes. It will be up to the discretion of the probation officer or pretrial services officer, but my expectation is the exceptions would be for any medical appointments or religious observances, and that's about it.

The other thing, I am asking my deputy to give me a date for sentencing, and I do not anticipate adjourning the date for sentencing. So that's the way this will be. So if the thought is that sentencing is going to get put off indefinitely while reports are going to be prepared, psychological reports, medical reports or the like, I don't anticipate that. So I am putting the cards face up on the table.

Let me give you a date for sentencing.

MR. GINSBERG: Your Honor.

THE COURT: One second, please.

MR. GINSBERG: I'm sorry.

THE COURT: Yes, Mr. Ginsberg.

MR. GINSBERG: I was just going to ask your Honor about the time. I am sure your Honor is aware that usually completion of the probation report and things of that nature take these days at least 90 days or longer. So I would ask your Honor to consider putting the sentence off till late February or early March. I know I have a couple of commitments out of town in February. As your Honor said, you don't want to change the date. So I think that would be safer.

THE COURT: I have a sentencing date that I am going to set, and I am going to ask for an expedited report from probation.

Flo.

THE DEPUTY CLERK: January 5, 2018, for Mr. Muir at 2 p.m., and for Mr. Tucker at 3 p.m.

THE COURT: Yes, sir.

MR. VELAMOOR: Just on the bail issue. My belief is that both defendants are being supervised out of the district of residence, which I think is Kansas.

THE COURT: Yes.

MR. VELAMOOR: I am assuming there is going to have to be some kind of coordination with the office there where they will impose these conditions. We have some concern as to how quickly and efficiently that is going to be done, especially since we are now on Friday afternoon. This intervening time

period gives us great concern before the electronic monitoring is put in place. We don't know, frankly, what flights, when the defendants plan to return.

THE COURT: Let me find out.

When does Mr. Tucker plan to return?

MR. ROTH: For the record, Mr. Tucker has been here for the duration of the trial and hasn't gone back, and he was here two weeks before, so he has been here seven weeks. He will pack up his stuff and head out no later than Sunday. And I would indicate that there is correspondence. I met with pretrial here during the course of this trial last week. So they are in touch with Kansas people over there.

THE COURT: I am sure they are.

I am going to leave it to the assistant United States attorneys to be in touch with pretrial services to inform them of the bail modification and to get their assistance.

MR. VELAMOOR: That's fine. Can we also, perhaps, have a court deadline by which we could use to incentivize the office over there to impose the conditions, the electronic monitoring and home detention. We would also ask, even before that bracelet is put in place, that they remain in home detention.

THE COURT: The home confinement starts as of now. The electronic monitoring, that I would anticipate would be completed by Tuesday of next week.

MR. VELAMOOR: OK.

THE COURT: Existing bail conditions for Scott Tucker and Timothy Muir continue, with home confinement effective immediately and electronic monitoring to be implemented by pretrial services by October 17, 2017.

Anything further from the government?

MR. VELAMOOR: Nothing further, your Honor.

THE COURT: Anything further from the defendants?

MR. BATH: Mr. Muir might go back tonight, planning to come back on Sunday. So I think we will stick with that plan. He will go home and he will be home, and I will work out getting everything back to Kansas City.

THE COURT: I have no objection to that.

Anything else?

All right. I don't think there is anything else to be said. I said what I said before the jury verdict after the jury was charged, and I certainly hope that the lawyers who worked so hard get some peace and reacquainted with their families.

We are adjourned.

(Trial concluded)